

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660/fax (240) 777-6665**

SPECIAL EXCEPTION OF MARIA C. ORDONEZ

Case No. S.E. 07-2

ORDER OF REVOCATION

Background

Special Exception 07-2 was granted to Petitioner Maria C. Ordonez by the Hearing Examiner, on May 16, 2007, to permit the operation of a Child Day Care Center for up to fourteen (14) children, on her property located at 13904 Bauer Drive, Rockville, Maryland, in the R-90 Zone. The special exception was administratively modified on January 10, 2008, to permit a staff member to reside in the basement of the dwelling if certain conditions were met (Exhibit 48). For the reasons outlined below, this order will revoke the special exception in accord with the recommendation of the Department of Permitting Services (DPS).

On April 8, 2015, Jennyffer Vargas, DPS Permitting and Code Enforcement Inspector, sent a memorandum (Exhibit 49) to the Office of Zoning and Administrative Hearings (OZAH) referring the above captioned case for revocation based on two documents attached to her memo – a March 19, 2010 letter from former Zoning Inspector Heather D. Gottke to the then current owner of the subject premises, Li-Hong Zhang (Exhibit 49(a)) and an April 9, 2010 memorandum from Ms. Gottke to OZAH seeking revocation of the special exception (Exhibit 49(b)). OZAH has no record of previously receiving the attachments (Exhibits 49(a) and (b)); however, given the facts contained in these attachments and Ms. Vargas's follow-up memorandum of April 8, 2015, revocation of the special exception, based on abandonment, appears appropriate.

According to Ms. Gottke's April 9, 2010 memorandum (Exhibit 49(b)), she conducted an inspection of the premises on October 31, 2008, and found the property vacant. Mr. Gottke was unable to contact the last known petitioner, nor ascertain a forwarding address. She further recited that the Maryland Department of Taxation (SDAT) showed a sale of the property on January 8, 2010. A current check of the SDAT records confirms that assertion and lists the new owner of the property as Li-Hong Zhang. Exhibit 50.

On March 9, 2010, Ms. Gottke conducted another inspection of the premises and once again noted the fact that the Special Exception was no longer in operation (Exhibit 49(a)). She then sent a letter, dated March 19, 2010, to the new property owner, Ms. Li-Hong Zhang, requesting a written statement confirming the Department's finding that the Special Exception had been abandoned. Ms. Zhang replied on March 25, 2010, by writing and signing, on a copy of the March 19, 2010 letter, the statement, "No child care in this house as I am the property owner since 12/18/2009." Exhibit 49(a).

Based on these facts, Ms. Gottke issued her memorandum dated April 9, 2010 (Exhibit 49(b)), requesting the revocation of the Special Exception by OZAH, and Ms. Vargas issued her follow-up memo to OZAH of April 8, 2015 (Exhibit 49).

Opinion

Pursuant to Section 7.7.1.B.1. of the new Zoning Ordinance, special exceptions approved before October 30, 2014 must be reviewed under the standards of the Zoning Ordinance in effect on October 29, 2014 (*i.e.*, under the old, 2004 Zoning Ordinance). Since the subject special exception clearly falls into that category, it will be reviewed under the old Ordinance.

Section 59-G-1.3(d) of the old Zoning Ordinance provides, in relevant part:

- (1) If, after making an inspection of a property governed by special exception, the Department finds that the special exception use as granted has been abandoned, it must forward written notice of its findings to the last recorded holder of the special exception and to the property owner, advising of the Department's finding and directing that they forward to the Department, within 60 days from the date of mailing of the notice, a written statement confirming the Department's finding that the special exception has been abandoned or challenging said finding and requesting that said special exception be continued.*
- (2) If the Department receives a written response from the special exception holder and the property owner acknowledges that the special exception has been abandoned, the Department must notify the Board of its findings, and the Board¹, upon receipt of such notice, must adopt and issue a written resolution finding the special exception to have been abandoned and ordering the special exception revoked.*
- (3) If within the provided 60-day period, the Department receives a written statement from either the special exception holder or the property owner challenging the Department's findings and requesting that the special exception be continued, the*

¹ Although this section refers to the "Board," meaning the Board of Appeals, the Hearing Examiner is authorized by Section 59-G-1.3(f) of the old Zoning Ordinance to conduct the same proceedings with regard to special exceptions, such as this one, that it has issued.

Department must notify the Board, and the Board must convene a public hearing, in accordance with the provisions of subsection (e) of this section, to determine whether or not the special exception was abandoned and whether or not the special exception should be revoked.

- (4) If after 60 days from the date of mailing of the Department's notice, the Department has received no response from either the special exception holder or the property owner, the Department must notify the Board of its findings, and the Board must issue to the special exception holder and the property owner an order to appear before the Board to show cause why the special exception should not be revoked.*
- (5) If neither the special exception holder nor the property owner appears before the Board to show cause why the special exception should not be revoked, the Board must adopt and issue a resolution finding the special exception to have been abandoned and ordering the special exception revoked. . . .*

As detailed above, multiple DPS inspections have revealed that the special exception has been abandoned, and the current property owner has confirmed that the special exception has been abandoned. No response has been received from the special exception holder, and DPS has been unable to locate the special exception holder.

Under the statutory terms quoted above, if DPS receives a written response from both the special exception holder and the property owner acknowledging that the special exception has been abandoned, the Hearing Examiner must find the special exception to have been abandoned and order the special exception revoked. The Code further provides that if the Department has received no response from either the special exception holder or the property owner, a show cause hearing is required to determine whether the special exception should be revoked. The statutory language does not seem to cover a situation, like this one, where a response confirming abandonment has been received from the property owner, but no response has been received from a special exception holder who can no longer be located.

The Hearing Examiner concludes that it would be pointless to issue a notice and schedule a show cause hearing when the indisputable facts clearly establish that the special exception has been abandoned (for years at this point) and DPS cannot find the special exception holder in order to send her notice of the show cause hearing.

The Department of Permitting Services has met its obligations under Section 59-G-1.3(d)(2), and a reasonable reading of that section now requires the Hearing Examiner to issue a finding that the special exception has been abandoned and order the special exception revoked.

Order

Based on this record, the Hearing Examiner hereby finds that the special exception granted in the above-captioned case has been abandoned. Accordingly, pursuant to Sections 59-G-1.3(d) and 59-G-1.3(f) of the 2004 Zoning Ordinance, Special Exception No. S.E. 07-02 is hereby **REVOKED**.

Dated: April 20, 2015



Martin L. Grossman
Director and Hearing Examiner
Office of Zoning and Administrative Hearings

cc: Li-Hong Zhang
Jennyffer Vargas, Department of Permitting Services
Planning Department